

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL NOTE

HB 1454 - SB 2243

February 6, 2016

SUMMARY OF BILL: Makes rape of a child a lesser included offense of aggravated rape of a child.

ESTIMATED FISCAL IMPACT:

Increase State Expenditures – \$78,900/Incarceration*

Assumptions:

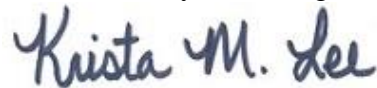
- Tennessee Code Annotated § 40-18-110(f) sets forth the test for determining whether an offense is a lesser included offense. Tenn. Code Ann. § 40-18-110(g) provides an express list of offenses that are lesser included offenses—e.g., second degree murder is a lesser included offense of first degree murder.
- Under Tenn. Code Ann. § 40-18-110(f), rape of a child is not a lesser included offense of aggravated rape of a child because it does not constitute an attempt, facilitation, or solicitation of aggravated rape of a child and because not all the elements of rape of a child are included within the elements of aggravated rape of a child. The bill expressly makes rape of a child a lesser included offense of aggravated rape of a child under Tenn. Code Ann. § 40-18-110(g).
- The bill will result in defendants being convicted of rape of a child as a lesser included offense rather than convicted of aggravated sexual battery as a lesser included offense.
- In a recent court of appeals case (*State v. John J. Ortega, Jr.*, No. M2014-01042-CCA-R3-CD, 2015 Tenn. Crim. App. LEXIS 295, (Tenn. Crim. App. Apr. 23, 2015)), the court noted that there had been seven convictions upheld in which the defendant was convicted of aggravated sexual battery as a lesser included offense of aggravated rape of a child. These represent convictions that were appealed. It is assumed that there are two convictions each year in which a defendant is convicted of aggravated sexual battery as a lesser included offense of aggravated rape of a child.
- It is assumed that the bill will result in convictions of rape of a child rather than aggravated sexual battery.
- Statistics from the Department of Correction (DOC) show an average time served of 7.89 years for aggravated sexual battery and 11.08 years for rape of a child. The bill will result in two admissions each year serving an additional 3.19 years, or 1,165.15 days.
- According to the U.S. Census Bureau, population growth in Tennessee has been 1.12 percent per year for the past 10 years, yielding a projected compound population growth

of 11.78 percent over the next 10 years. Population growth will not affect the fiscal impact of this legislation.

- According to the DOC, 49.3 percent of offenders will re-offend within three years of their release. A recidivism discount of 49.3 percent has been applied to this estimate to account for the impact of offenders who would re-offend under current law within the additional time added by this bill. It is assumed that the re-offender would have committed the subsequent offense at the same felony level as under current law (2 offenders x .493 = 1 offender).
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on one offender [2 offenders – 1 (recidivism discount)] serving an additional 3.19 years (1,165.15 days) for a total of \$78,915.61 (\$67.73 x 1,165.15 days).
- The bill does not create any new cases, but merely changes the offense for which a defendant is convicted.
- It is assumed that the courts, district attorneys, and public defenders can handle any impact within their existing resources. The Administrative Office of the Courts, the District Attorneys General Conference, and the District Public Defenders Conference confirm that they can handle any impact within their existing resources.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in blue ink that reads "Krista M. Lee". The signature is written in a cursive, flowing style.

Krista M. Lee, Executive Director

/trm